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Voon Lee Shan v Richard Malanjum

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HIGH COURT (KUCHING) — ORIGINATING SUMMONS NO KCH-24–42/10 OF 2020
ALEXANDER SIEW JC
4 MARCH 2022

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Legal Profession — Admission — Objection — Former Chief Justice of Malaysia ('CJ') and ex-Chief Judge of Sabah and Sarawak ('CJSS') petitioned after retirement from Judiciary to be admitted to practise law in Sarawak — Petitioner also applied to be exempted from doing pupillage — Practising lawyer in Sarawak objected to both the admission and the exemption — Whether record showed petitioner had satisfied all criteria for admission including proof of 'Sarawak connections' under s 2(2) of Sarawak Advocates' Ordinance 1953 — Whether as CJSS for 12 years petitioner had been ordinarily resident/domiciled in Kuching, Sarawak during that period — Whether petitioner had also shown he had been granted permanent resident status in Sarawak — Whether considering petitioner's long service as CJSS and then as CJ there was no good reason to object to his application to be exempted from doing pupillage

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The defendant, a former Chief Justice of Malaysia who was born in Sabah but had been granted permanent resident status in Sarawak, petitioned the High Court at Kuching for admission to practise law in Sarawak following his retirement from the Judiciary. In connection with the petition, the defendant also applied for exemption from having to do pupillage. The plaintiff, a practising lawyer in Sarawak, applied to intervene in the said petition and the exemption application in order to oppose the same. The High Court dismissed the plaintiff's intervener applications and granted the defendant's petition and exemption application after the State Attorney-General's Chambers and the Sarawak Advocates' Association raised no objections. The plaintiff appealed to the Court of Appeal against the dismissal of his intervener applications and then filed the instant originating summons ('OS') to declare as illegal, null and void, and to set aside, the orders that the High Court had made in favour of the defendant. In support of the OS, the plaintiff contended that as a practising advocate in Sarawak, he had an interest, right and duty to object if a non-Sarawakian petitioned to be admitted to practise law in Sarawak in contravention of existing laws, rules and regulations governing the matter, especially the Sarawak Advocates' Ordinance 1953 ('the Ordinance'). The plaintiff pointed out that the defendant's petition for admission and exemption from doing pupillage had breached various provisions of the Ordinance as well as the Advocates (Pupillage and Admission) Rules 2014. The plaintiff said the defendant's averment that he had been granted permanent resident status in

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Sarawak was untrue; that the defendant had also not proven that he had been ordinarily resident in Sarawak for a continuous period of five years or more and thus not fulfilled the requirement of 'Sarawak connections' under the Ordinance. In his affidavit in reply, the defendant denied the plaintiff's allegations and raised the preliminary objection that the plaintiff had no locus standi to be heard, that the matters he had raised were res judicata and that the OS was an abuse of process of court. The defendant subsequently filed a supplementary affidavit annexing a letter from the Immigration Department dated 23 March 2016 confirming that he had been accorded permanent resident status in Sarawak. The record showed that during the time he was the Chief Judge of Sabah and Sarawak from 2006 until 2018 (ie, before his elevation to Chief Justice), the defendant was ordinarily resident in Kuching, Sarawak which used to be the permanent residence/domicile, until 2019, of the principal registry of the High Court of Sabah and Sarawak. The defendant was also admitted as an advocate and solicitor of the then High Court of Borneo at Kota Kinabalu, Sabah, in November 1977.

Held, dismissing the OS with costs:

(1) The issues of locus standi, res judicata and abuse of process did not arise in the instant matter. Locus standi did not arise because the instant action was not a judicial review proceeding. In any event, applying the threshold in O 53 r 2(4) of the Rules of Court 2012, the plaintiff clearly had locus standi for being a person 'adversely affected' by the High Court's orders. Res judicata had no application since all that had happened was that the plaintiff's applications to intervene in the petition for admission and application for exemption had been dismissed. It was not a case where the plaintiff had sued the defendant in another legal proceeding on the same subject-matter and that other court had pronounced judgment in that other proceeding. Considering all the circumstances, the instant action was not an abuse of process. An action to impugn an order of the court could be brought not only by a party to the order but by anyone affected by it (see paras 26–37).

(2) The defendant had been Chief Judge of the High Court of Sabah and Sarawak ('CJSS') for 12 years, from July 2006 until July 2018, during which time his main place of work was in Kuching, Sarawak. This necessarily entailed the defendant having a place of residence in Kuching. It mattered not if, at the same time, he also had a residence in Kuala Lumpur or Putrajaya to discharge his duties as CJSS or as a judge of the Federal Court or continued to maintain a residence in Sabah where the defendant was originally from (see paras 72–76).

(3) This was not a case where an order was granted in contravention of a statute, but where it was granted clearly in compliance with a statute (see para 78).

(4) As for the order allowing the defendant an exemption from doing pupillage, the court found nothing irregular with the exemption granted. While rules were rules and everyone regardless of their rank of position had to abide by the rules, this court had difficulty understanding why anyone, let alone a practising lawyer, would have any issue with a former Chief Justice and long-serving CJSS being exempted from doing pupillage (see paras 79–80).

[Bahasa Malaysia summary

Defendan, bekas Ketua Hakim Negara yang dilahirkan di Sabah tetapi telah diberikan taraf pemastautin tetap di Sarawak, memohon petisyen kepada Mahkamah Tinggi di Kuching untuk diterima masuk menjalankan amalan guaman di Sarawak selepas bersara daripada Badan Kehakiman. Berdasarkan petisyen tersebut, defendan juga memohon pengecualian daripada menjadi pelatih. Plaintif, seorang peguam beramal di Sarawak, memohon untuk mencelah dalam petisyen tersebut dan permohonan pengecualian untuk menentang perkara yang sama. Mahkamah Tinggi menolak permohonan mencelah plaintif dan membenarkan petisyen dan permohonan pengecualian defendan selepas Jabatan Peguam Besar Negeri dan Persatuan Peguambela Sarawak tidak mengemukakan bantahan. Plaintif merayu kepada Mahkamah Rayuan terhadap penolakan permohonan mencelahnya dan kemudian memfailkan saman pemula semasa ('SP') untuk satu deklarasi sebagai bertentangan dengan undang-undang, batal dan tidak sah, dan untuk mengetepikan, perintah yang telah dibuat oleh Mahkamah Tinggi yang memihak kepada defendan. Bagi menyokong OS tersebut, plaintif berpendapat bahawa sebagai peguam yang beramal di Sarawak, beliau mempunyai kepentingan, hak dan kewajipan untuk membantah sekiranya bukan warga Sarawak memasukkan petisyen untuk diterima beramal di Sarawak yang melanggar undang-undang, peraturan dan pengawalan sedia ada yang mengawal perkara tersebut, terutamanya Ordinan Peguambela Sarawak 1953 ('Ordinan tersebut'). Plaintif menegaskan bahawa petisyen defendan untuk kemasukan dan pengecualian daripada menjadi pelatih telah melanggar pelbagai peruntukan Ordinan serta Kaedah-Kaedah Peguambela (Pelatih dan Penerimaan) 2014. Plaintif berkata pengataan bahawa defendan bahawa beliau telah diberikan status pemastautin tetap di Sarawak adalah tidak benar; bahawa defendan juga tidak membuktikan bahawa beliau lazimnya bermastautin di Sarawak untuk tempoh berterusan selama lima tahun atau lebih dan dengan itu tidak memenuhi keperluan 'Sarawak connection' di bawah Ordinan tersebut. Dalam afidavit jawapannya, defendan menafikan dakwaan plaintif dan membangkitkan bantahan awal bahawa plaintif tidak mempunyai locus standi untuk didengar, bahawa perkara yang dibangkitkannya adalah res judicata dan bahawa OS tersebut adalah penyalahgunaan proses mahkamah. Defendan kemudiannya memfailkan afidavit tambahan dengan melampirkan surat daripada Jabatan Imigresen bertarikh 23 Mac 2016 yang mengesahkan bahawa beliau telah diberi taraf pemastautin tetap di Sarawak. Rekod

menunjukkan bahawa semasa beliau menjadi Hakim Besar Sabah dan Sarawak dari 2006 hingga 2018 (iaitu, sebelum dinaikkan pangkat kepada Ketua Hakim Negara), defendan lazimnya bermastautin di Kuching, Sarawak yang pernah menjadi kediaman/domisil tetap, sehingga 2019, pendaftaran utama Mahkamah Tinggi Sabah dan Sarawak. Defendan juga diterima sebagai peguambela dan peguamcara Mahkamah Tinggi Borneo ketika itu di Kota Kinabalu, Sabah, pada November 1977.

Diputuskan, menolak OS dengan kos:

(1) Isu locus standi, res judicata dan penyalahgunaan proses tidak timbul dalam perkara semasa. Locus standi tidak timbul kerana tindakan semasa tersebut bukanlah prosiding semakan kehakiman. Walau apa pun, menggunakan ambang dalam A 53 k 2(4) Kaedah-Kaedah Mahkamah 2012, plaintif jelas mempunyai locus standi kerana menjadi orang yang 'terjejas teruk' oleh perintah Mahkamah Tinggi. Res judicata tidak terpakai kerana semua yang berlaku adalah permohonan plaintif untuk mencelah dalam petisyen untuk kemasukan dan permohonan untuk pengecualian telah ditolak. Ia bukan kes di mana plaintif telah menyaman defendan dalam prosiding undang-undang lain mengenai perkara yang sama dan mahkamah lain telah memberikan penghakiman dalam prosiding lain. Mengambil kira semua keadaan, tindakan semasa bukanlah penyalahgunaan proses. Tindakan untuk membatalkan perintah mahkamah boleh dibawa bukan sahaja oleh pihak kepada perintah tersebut tetapi oleh sesiapa sahaja yang terjejas olehnya (lihat perenggan 26–37).

(2) Defendan telah menjadi Hakim Besar Sabah dan Sarawak ('HBSS') selama 12 tahun, dari Julai 2006 hingga Julai 2018, di mana tempat kerja utamanya adalah di Kuching, Sarawak. Ini semestinya memerlukan defendan mempunyai tempat tinggal di Kuching. Tidak mengapa jika, pada masa yang sama, beliau juga mempunyai kediaman di Kuala Lumpur atau Putrajaya untuk melaksanakan tugasnya sebagai HBSS atau sebagai Hakim Mahkamah Persekutuan atau terus mengekalkan kediaman di Sabah di mana defendan berasal (lihat perenggan 72–76).

(3) Ini bukanlah kes di mana suatu perintah diberikan bertentangan dengan statut, tetapi apabila perintah tersebut diberikan dengan jelas dalam pematuhan statut (lihat perenggan 78).

(4) Bagi perintah membenarkan defendan pengecualian daripada menjadi pelatih, mahkamah mendapati tiada yang tidak teratur dengan pengecualian yang diberikan. Walaupun peraturan adalah peraturan dan semua orang tanpa mengira pangkat kedudukan mereka perlu mematuhi peraturan, mahkamah ini menghadapi kesukaran untuk memahami mengapa sesiapa, apatah lagi peguam yang menjalankan amalan, akan menghadapi sebarang isu dengan bekas Ketua Hakim Negara dan HBSS

yang telah lama berkhidmat dikecualikan daripada melakukan pupillage (lihat perenggan 79–80).]

Cases referred to

Abdul Razak bin Rouse, Re [1974] 2 MLJ 164, FC (refd)
Badiaddin bin Mohd Mahidin v Arab Malaysia Finance Bhd [1998] 1 MLJ 393, FC (folld)
Fox v Stirk and another; Ricketts v Registration Officer for the City of Cambridge [1970] 3 All ER 7, CA (refd)
Mahon v Mahon [1971] 2 MLJ 266, FC (refd)

Legislation referred to

Advocates (Pupilage and Admission) Rules 2014 rr 3, 9
Advocates Ordinance (Cap 110) ss 2(2), (2)(b), (2)(c), 4(1A), 4(1B)
Rules of Court 2012 O 53 r 2(4)

Raymond Jeyaraj Noel (with Lim Heng Choo, Bartholomew Lopez, Addy Termizi bin Mohamed, Steven Sia, Wong Hock Siong and Analissa Lim) (RJ Noel Advocates) for the plaintiff.
Tan Kee Heng (with Chong Siew Chiang, Michael Kong, Clarissa Kuek and Sean Ha) (SK Ling & Tan Advocates) for the defendant.

Alexander Siew JC:

[1] The defendant Richard Malanjum, now Tun Richard Malanjum, was the Chief Justice of Malaysia from July 2018 to April 2019, before his retirement from the judiciary.

[2] Prior to his elevation as the Chief Justice, the defendant was the Chief Judge of Sabah and Sarawak for 12 years, from July 2006 to July 2018.

[3] The defendant hails from Sabah and was the first and only East Malaysian to date, to hold the highest judicial post in the country, as the Chief Justice.

[4] Subsequent to his retirement from the judiciary, in June 2020, the defendant petitioned to be admitted to practice as a lawyer in Sarawak ('petition for admission').

[5] In connection therewith, the defendant also applied to be exempted from doing pupilage ('application for exemption').

[6] Applications for admission in Sarawak are generally heard before the learned Chief Judge of Sabah and Sarawak sitting in the High Court.

[7] The State Attorney-General and the Advocates Association of Sarawak are entitled to be heard on such applications, pursuant to the Advocates Ordinance of Sarawak ('the Ordinance').

[8] Before the petition for admission and application for exemption were heard, the plaintiff Mr Voon Lee Shan, a Sarawakian lawyer, applied to intervene in those matters.

[9] The learned Chief Judge of Sabah and Sarawak heard the plaintiff's application to intervene on 7 September 2020 and fixed 15 September 2020 for ruling.

[10] On 15 September 2020, the learned Chief Judge of Sabah and Sarawak dismissed the plaintiff's application to intervene.

[11] The learned Chief Judge of Sabah and Sarawak proceeded to hear the application for exemption and petition for admission, in such order.

[12] The State Attorney-General's Chambers and the Advocates Association of Sarawak did not object to the application for exemption and the petition for admission.

[13] The learned Chief Judge of Sabah and Sarawak duly granted orders allowing the exemption and admitting the defendant to practice in Sarawak.

[14] Dissatisfied with the decision dismissing his application to intervene, the plaintiff filed an appeal to the Court of Appeal.

[15] Thereafter, the plaintiff filed the instant action by way of originating summons ('originating summons'), for the following orders:

> 1 A declaration that the order of the Kuching High Court handed down on 15th September 2020 that the Defendant be exempted from Pupillage or reading in chambers is illegal, null and void and that it be set aside;
>
> 2 A declaration that the order of the Kuching High Court handed down on 15th September 2020 that the Defendant be admitted as advocate of the High Court of Sabah and Sarawak in the State of Sarawak is illegal, null and void and that it be set aside;
>
> 3 A declaration that the order of the Kuching High Court handed down on 15th September 2020 that the Defendant's name be enrolled on the Roll of Advocates in Sarawak is illegal, null and void and that it be set aside ...

[16] Contrary to the Rules of Court and usual practice, the originating

summons did not state the grounds for the relief sought. A

[17] In the affidavit in support of the originating summons, the plaintiff claimed that subsequent to the aforesaid legal events on 15 September 2020, a copy of the cause papers of the petition for admission and application for exemption was anonymously left in the letterbox of his office. B

[18] According to the plaintiff, a perusal of the cause papers showed, inter alia, the following:

(a) the petition for admission was filed four days before the application for exemption and was therefore incompetent for failing to comply with s 4(1A) and (1B) of the Ordinance; C

(b) the defendant had contravened r 3 of the Advocates (Pupilage and Admission) Rules 2014 by failing to 'notify the AAS, the Registrar of the High Court and the SAG, within seven days of the commencement of his pupilage'; D

(c) the defendant had failed to comply with r 9 of the Advocates (Pupilage and Admission) Rules 2014 by failing to attend a required etiquette course or to show he had been granted an exemption from such attendance; E

(d) the defendant had averred in his cause papers that the defendant had been granted permanent resident status in Sarawak and this averment was 'wholly untrue'; F

(e) the defendant had not fulfilled the requirement of 'Sarawak connections'; the defendant had failed to show he had been ordinarily resident in Sarawak for a continuous period of five years or more as required under s 2(2)(b) of the Ordinance; and G

(f) the learned Chief Judge of Sabah and Sarawak had 'erred'; the learned Chief Judge of Sabah and Sarawak had acted ultra vires and in contravention of s 2(2)(b) of the Ordinance in granting the order of admission; the order was 'illegal, null and void' and the order 'ought to be set aside *ex debito justitiae* ...'. H

[19] In his affidavit in opposition, the defendant denied the allegations in the affidavit in support and maintained, inter alia, that: I

(a) the plaintiff had no locus standi, the matters concerned were res judicata and the instant action was an abuse process of the court;

(b) the application for exemption although dated later than the petition for admission, was filed before the latter; and

(c) the application for exemption and petition for admission had been duly considered and decided by the learned Chief Judge of Sabah and Sarawak.

[20] The plaintiff filed an affidavit in reply in which para 3.1 reads as follows:

(a) I am a practicing advocate admitted into the Roll of Advocates in the High Court of Sabah and Sarawak in Sarawak:

(b) I have a direct interest in the legal fraternity in the State of Sarawak to ensure that all advocates are properly and legally admitted to the High Court of Sabah and Sarawak in Sarawak under the provisions of the Sarawak Advocates' Ordinance 1953 Cap 110 (hereinafter referred to as the 'Ordinance').

(c) The wrongful admission of the Defendant would directly affect the legal fraternity and would change the legal landscape in Sarawak as the Defendant, an outsider unqualified to be admitted as advocate of the High Court of Sabah and Sarawak in Sarawak, could be eligible to become the next President of the Advocates Association Sarawak that could determine the policy and direction of the advocates' community in Sarawak.

(d) The wrongful admission of the Defendant makes the Defendant's position as an advocate on the Roll of Advocates of the High Court of Sabah and Sarawak in Sarawak as ordered by the honourable Court completely untenable, illegal, and void and an affront to the rule of law. The Defendant's wrongful admission is a matter that every practicing advocate has and/or ought to have an interest in.

(e) The wrongful admission would also create an improper legal precedent and prejudice all advocates in Sarawak because any unqualified non-Sarawakian could use such an improper legal precedent as an excuse and/or basis to secure admission as advocate of the High Court of Sabah and Sarawak in Sarawak.

(f) It is my sacred duty as an advocate of the High Court of Sabah and Sarawak in Sarawak and an officer of this honorable Court to ensure that the provisions of the Sarawak Advocates' Ordinance are strictly complied with by any person, irrespective of rank, standing or origin. seeking admission as advocate of the High Court of Sabah and Sarawak in Sarawak.

[21] The plaintiff further maintained that 'the principles enunciated by the learned Federal Court in *Badiaddin bin Mohd Mahidin v Arab Malaysia Finance Bhd* [1998] 1 MLJ 393 allow me to take out this originating summons to set aside the order of admission granted to the defendant on 15th September, 2020'.

THE PERMANENT RESIDENT STATUS OF THE DEFENDANT

[22] The allegation that the defendant, a former Chief Justice, had made a false statement in his petition for admission in saying he had permanent resident status in Sarawak, is a serious allegation which if left hanging, could bring the judiciary and the whole legal system into disrepute.

[23] The documents exhibited in the petition for admission did not appear on the face of it, at least to the court's non-expert eye, to show clearly such permanent resident status.

[24] During the course of the hearing of the instant action, this court suggested to the parties that this matter be clarified, whether by the parties seeking confirmation from the Immigration Department or otherwise.

[25] Both sides were agreeable to the suggestion and subsequently the defendant filed a supplementary affidavit annexing a letter from immigration confirming the defendant's permanent resident status in Sarawak.

THE PRELIMINARY OBJECTIONS

Locus standi

[26] Locus standi or standing to sue is a doctrine usually invoked in judicial review proceedings.

[27] The instant action is not a judicial review proceedings.

[28] The plaintiff had brought this action to set aside an order of the High Court, alleging this order had been granted in contravention of a statute (the Ordinance) and in reliance on a false representation (regarding the defendant's permanent resident status in Sarawak).

[29] As the instant action is not a judicial review proceedings, this court is of the view the issue of locus standi does not arise.

[30] This court is further of the view that an action to impugn an order of the court can be brought not only by a party to the order, but by anyone affected by the order.

[31] In any event, the plaintiff would clearly have locus standi going by the threshold in O 53 r 2(4), of being a person 'adversely affected' by the order.

Res judicata

[32] The court is also of the view the issue of res judicata does not arise in the instant action.

[33] There is no allegation the plaintiff had sued the defendant in another legal proceedings on the same subject matter and that a court has pronounced judgment in such other legal proceedings.

[34] All that had happened was the plaintiff had applied to intervene in the petition for admission and application for exemption and this application to intervene was dismissed by the learned Chief Judge of Sabah and Sarawak.

[35] Thus, the plaintiff did not succeed to become a party to the admission or exemption proceedings and there can be no argument of res judicata as against the plaintiff for any ruling or order made subsequently in those proceedings.

Abuse of process

[36] Likewise, the court is not with the defendant on the argument the instant action is an abuse of process.

[37] The plaintiff's action might ultimately be found to be wanting, but in the assessment of this court after taking into consideration all the circumstances leading to the instant action, the instant action cannot be said to be an abuse of process.

Jurisdiction of this court

[38] Learned counsel for the defendant raised an additional preliminary objection at the hearing.

[39] Learned counsel submitted that this court has no jurisdiction to entertain the instant subject matter, on the argument that the Ordinance has granted exclusive jurisdiction to the learned Chief Judge of Sabah and Sarawak to decide on any application for admission.

[40] The court finds no merit in this submission.

[41] The court is not being asked to undertake the functions reserved for the learned Chief Judge of Sabah and Sarawak under the Ordinance, but to adjudicate on the issues raised in the instant action.

THE FEDERAL COURT DECISION OF BADIADDIN

[42] This action is stated to be premised on the landmark Federal Court decision of *Badiaddin bin Mohd Mahidin v Arab Malaysia Finance Bhd* [1998] 1 MLJ 393.

[43] In *Badiaddin*, the appellants had given a third-party charge over a parcel of Malay reserve land ('the land') in favour of the respondent finance company, as security for a loan granted by the respondent to a business associate of the appellants, one Ismail.

[44] Ismail defaulted on the loan following which the respondent obtained an order for sale of the land from the land administrator.

[45] As the respondent was not a 'Malay', the charge was in contravention of the Malay Reservation Enactment ('the Enactment').

[46] The appellants applied to the High Court for a declaration that the charge and the order for sale of the land administrator were invalid.

[47] The learned judge, Mustapha Hussain J, granted the declarations.

[48] In addition to granting the declarations, the learned judge also ordered the appellants to repay the outstanding balance of the loan.

[49] This first set of orders was made in March 1988 ('the first order').

[50] Subsequently, in October 1990, the learned judge made another order whereby he granted a declaration that the appellants had received an advantage or benefit directly from the respondent and ordered the land to be sold and for the proceeds thereof to be used to repay the balance owing on the loan ('the second order').

[51] The appellants' appeal against the second order was dismissed on procedural grounds.

[52] The appellants then commenced fresh proceedings to set aside the second order.

[53] The matter came before a different judge, Noor Abdullah J.

[54] The learned judge granted an order setting aside the second order.

[55] The respondent appealed to the Court of Appeal which allowed the appeal, ruling that the High Court was *functus officio* and had no power to reopen the matter.

[56] The appellants appealed to the Federal Court.

[57] The Federal Court allowed the appellants' appeal and the order of Noor Abdullah J was restored.

[58] Mohd Azmi FCJ, Peh Swee Chin FCJ and Gopal Sri Ram JCA each delivered a separate judgment, with the remaining two justices Eusoff Chin CJ and Wan Adnan FCJ concurring with the judgment of Justice Mohd Azmi.

[59] Justice Mohd Azmi and Justice Gopal Sri Ram both held the High Court had the power, in fresh proceedings initiated for that purpose, to set aside a previous order of the High Court, if the previous order had been granted in contravention of a statute.

[60] Justice Peh Swee Chin disagreed on this point but nevertheless also allowed the appeal, holding that the second order was an abuse of process and that the second order instead of being set aside, should be stayed permanently.

[61] Certain passages from the judgments delivered by Justice Mohd Azmi and Justice Gopal Sri Ram are instructive, for present purposes:

Mohd Azmi FCJ

For my part, I must hasten to add that apart from breach of rules of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court *ex debito justitiae* to a category of cases involving orders which contravened 'any written law', the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction. It should not for instance be applied to a defect in a final order which has contravened a procedural requirement of any written law. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself within the special exception.

Gopal Sri Ram JCA

It is one thing to say that an order of a court of unlimited jurisdiction must be obeyed until it is set aside. It is quite a different thing to say that a court of unlimited jurisdiction may make orders in breach of written law. *Isaacs v Robertson* is certainly not authority for the latter proposition. I take it to be well settled that even courts

of unlimited jurisdiction have no authority to act in contravention of written law. Of course, so long as an order of a court of unlimited jurisdiction stands, irregular though it may be, it must be respected. But where an order of such a court is made in breach of statute, it is made without jurisdiction and may therefore be declared void and set aside in proceedings brought for that purpose. It is then entirely open to the court, *upon the illegality being clearly shown, to grant a declaration to the effect that the order is invalid and to have it set aside. It is wrong to assume that such an order may only be corrected on appeal.* (Emphasis added by the learned Justice.)

CORE ISSUE

[62] The core issue before this court can be summarised as follows: *was the admission of the defendant clearly in contravention of the Ordinance?*

[63] The learned Chief Judge of Sabah and Sarawak had not issued grounds of decision for the order admitting the defendant.

[64] The notes of proceedings of the admission proceedings show the State Attorney-General's Chambers and the Advocates Association of Sarawak did not object to the admission of the defendant.

[65] The pertinent part of the notes of proceedings is reproduced below:

Mr. Azhar: In respect of the petition of Tan Sri Richard upon reading the rules and the petition, we believe that Tan Sri Richard fulfilled the requirements of Section 4(2)(b) to be read together with Section 2(2) of the Advocates Ordinance.

Court: What limb is that?

Mr. Azhar: We believe it is Section 2(2)(b) where he has been a resident in Sarawak for a continuous period of 5 years or more.

Mr. Ranbir: I have prepared the written brief submission in respect of Tan Sri Richard. [Reading the submissions]

Mr. Tan: May it please YAA, with that may I humbly pray to move the petition of Tan Sri Richard Malanjum and I have brief introduction in the petition. [Reading from text]

With that YAA, I so much oblige and my learned counsel Mr. Chong would like to say a few words. I humbly pray for the Petitioner to be enrolled as an advocate in Sarawak.

Court: On the materials raised before me, I am satisfied that the Petitioner Tan Sri Richard Malanjum is a fit and proper person to be admitted to the Roll of Advocates Of High Court in Sabah and Sarawak upon payment of the prescribed fees ...

[66] The written submissions of the Advocates Association of Sarawak were brief and are reproduced below in their entirety:

1. We believe that the Petitioner has satisfied the provisions of the law and established Sarawak Connections by the fact that the Petitioner had on 23rd March 2016 been granted permanent resident status in Sarawak as is evinced by Exhibits 'RM-3', 'RM-4' and 'RM-5'.

2. The Petitioner had also been appointed as the Chief Judge of Sabah and Sarawak from 2006 to 2018 and as such throughout the aforesaid period had been resident in Kuching, Sarawak for a continuous period of more than five (5) years where the principal registry of the High Court of Sabah and Sarawak was at that material time domiciled.

3. We believe that the Petitioner is eligible to be admitted as an Advocate pursuant to Section 4 (2)(c) of the Ordinance and the interpretation of Sarawak Connections pursuant to Section 2(2)(b) and (c) of the Ordinance.

4. We believe that the Petitioner has not only satisfied the ordinary residency criteria stated in Section 2(2)(b) of the Ordinance but surpassed it by virtue of obtaining Permanent Residency status.

5. We further believe that since the Principle Registry of the High Court of Sabah and Sarawak at the material time was domiciled in Sarawak and the Petitioner was at the material time the Chief Judge of Sabah and Sarawak, the Petitioner has achieved the criteria of domicile laid down in Section 2(2)(c) of the Ordinance.

6. In the circumstances we do not object to the Petitioners petition for admission and enrollment as an Advocate of the High Court, of Sabah and Sarawak, in Sarawak.

7. We further in recognition of the Petitioner's extensive and long service to the state of Sarawak have no objections to the Petition.

[67] In summary, the State Attorney General Chambers took the position the defendant was qualified under s 2(2)(b) of the Ordinance, while the Advocates Association of Sarawak submitted the defendant came under both s 2(2)(b) and (2)(c).

[68] Section 2(2) of the Ordinance reads as follows:

Section 2. Interpretation

(2) A person shall be deemed to have Sarawak connections for the purposes of this Ordinance if, and only if, he

(a) has been born in Sarawak;

(b) has been ordinarily resident in Sarawak for a continuous period of five years or more; or

(c) satisfies the Chief Justice that he is, at the time when the question whether he has Sarawak connections is relevant, domiciled in Sarawak.

[69] The defendant's petition itself did not make clear which section the petition was relying on. A

[70] The text of the petition is reproduced below:

PETITION B

The humble petition of the abovenamed *RICHARD MALANJUM (NRIC NO. 521013-12-5229) ('Petitioner')* showeth as follows:-

1. The Petitioner is a Malaysian citizen, born in Tuaran, Sabah on 13th October 1952.

A copy of the Petitioner's Birth Certificate is annexed hereto and marked as Exhibit '*RM-1*'. C

2. The Petitioner is a Malaysian citizen domiciled in Sabah and the Petitioner has not lost his status as a Malaysian citizen or domicile in Sabah.

A copy of the Petitioner's Identity Card is annexed hereto and marked as Exhibit *'RM-2'*. D

3. On 23rd March 2016, the Petitioner was granted permanent resident status in Sarawak.

Copies of the letter from the Immigration Department of Malaysia dated 23rd March 2016, the endorsement on the Petitioner's Issued Malaysian Passports No. D00051903 and the Entry Permit No. K0000000913 issued by the Immigration Department Malaysia indicating the same are annexed hereto and marked as Exhibit *'RM-3', 'RM-4'* and *'RM-5'* respectively. E

4. The Petitioner has been conferred with a degree of Bachelor of Laws from the University of London (External), United Kingdom on 1st August 1975. F

A copy of the Petitioner's Degree of Bachelor of Laws from University of London (External) is annexed hereto and marked as Exhibit *'RM-6'*.

5. The Petitioner is qualified for admission as an advocate within the meaning of Section 4(1)(a) of the Advocates Ordinance (Sarawak Cap. 110) in that the Petitioner has been conferred with a Certificate of Standing by the Honourable Society of Gray's Inn. G

A copy of the Petitioner's Certificate of Standing by the Honourable Society of Gray's Inn is annexed hereto and marked as Exhibit '*RM-7*'.

6.The Petitioner was duly admitted as an Advocate and Solicitor of the High Court of Borneo (now known as the High Court of Sabah and Sarawak) at Kota Kinabalu before The Honourable Yang Arif Datuk B.T.H Lee on J 5th November 1977. H

A copy of the Petitioner's Admission Order dated 15th November 1977 is annexed hereto and marked as Exhibit *'RM-8'*.

7. The Petitioner has not at the date hereof been disbarred, struck off, suspended or in any other manner disentitled to practice as an advocate or legal practitioner by whatsoever name and style designated, in any territory within the Commonwealth and is not subject to any present or pending disciplinary proceedings in connection with his practice and has not been convicted in and is not subject to any pending or present criminal proceedings involving dishonesty in any territory within the I

A Commonwealth or elsewhere. The Petitioner is not an undischarged bankrupt or the subject of any bankruptcy proceedings.

8. The Petitioner is a person of good character and fit and proper to be admitted and enrolled as an Advocate of the High Court in Sabah and Sarawak, in Sarawak.

B A copy each of the Petitioner's Curriculum Vitae and Certificates of Good Character from Tan Sri Datuk Seri Panglima David Wong Dak Wah and Datuk Martin Mairin Idang are annexed hereto and marked as Exhibit *'RM-9', 'RM-10'* and *'RM-11'* respectively.

9. The Petitioner is qualified under the Advocates Ordinance (Sarawak Cap. 110) C and has satisfied all necessary requirements under the Advocates (Pupillage and Admission) Rules 2014 to be admitted as an Advocate of the High Court in Sabah and Sarawak, in Sarawak.

The Petitioner therefore humbly prays for an Order that upon payment of the prescribed fee, the Registrar shall admit and enroll the Petitioner as an Advocate of D the High Court in Sabah and Sarawak, in Sarawak.

[71] A copy of the defendant's resume was annexed to the defendant's petition.

E **[72]** The resume shows, inter alia, that the defendant had been the Chief Judge of the High Court of Sabah and Sarawak for 12 full years, from July 2006 to July 2018, before becoming Chief Justice.

F **[73]** The Registry of the High Court of Sabah and Sarawak had always been based in Kuching, Sarawak ever since the birth of the nation in 1963 until November 2019, when it was moved to Kota Kinabalu for a period of ten years on a rotation basis with Kuching.

G **[74]** In other words, the defendant's main place of work was in Kuching during a continuous period of 12 years, from 2006 to 2018.

[75] That would necessarily entail the defendant having a place of residence in Kuching.

H

[76] It matters not if the defendant at the same time, had a residence in Kuala Lumpur or Putrajaya to discharge his duties as the Chief Judge of Sabah and Sarawak cum Justice of the Federal Court or continued to maintain a residence in Sabah where the defendant is originally from, as this passage from the I Federal Court decision in *Mahon v Mahon* [1971] 2 MLJ 266 makes clear:

> In *Fox v Stirk and another; Ricketts v Registration Officer for the City of Cambridge* [1970] 3 All ER 7, where the qualification to vote at a parliamentary election in any constituency depended on the voter being 'resident' there on the qualifying date, Lord Denning MR quoted Viscount Cave LC with approval and

went on as follows:

> Hence I derive three principles. The first principle is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man a resident there. A guest who comes for the weekend is not resident. A short-stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account ...
>
> I think that a person may properly be said to be 'resident' in a place when his stay there has a considerable degree of permanence.

[77] The same passage from *Fox v Stirk and another; Ricketts v Registration Officer for the City of Cambridge* [1970] 3 All ER 7 was quoted in another Federal Court case *Re Abdul Razak bin Rouse* [1974] 2 MLJ 164 where the court had to interpret the equivalent provision in the Advocates Ordinance of Sabah and said:

> It seems to us that the expression 'normally resident' in the section must be construed in the ordinary way and according to the ordinary meaning of the language. It is not a term of art ...

[78] Thus, with respect, this is not a case where an order was granted clearly in contravention of a statute, but where an order was granted clearly in compliance with a statute.

[79] As for the other order allowing the defendant an exemption from pupilage, the court finds nothing irregular with the exemption granted.

[80] While rules are rules and everyone regardless of their rank or position has to abide by the rules, the court has difficulty understanding why anyone, let alone a practicing lawyer, would have any issue with a former Chief Justice and long-serving Chief Judge of Sabah and Sarawak being exempted from pupilage.

[81] Finally, during the course of the hearing, it was brought to the attention of this court that the learned Chief Judge of Sabah and Sarawak had subsequently also granted an order admitting to practice in Sarawak, the immediate successor to the defendant as Chief Judge of Sabah and Sarawak, Tan Sri David Wong Dak Wah, who also hails from Sabah.

[82] That petition was objected to by the State Attorney-General's Chambers and the learned Chief Judge of Sabah and Sarawak provided full grounds of decision.

[83] Those grounds of decision show the learned Chief Judge of Sabah and Sarawak had considered the three categories of Sarawak connections set out in s 2(2) of the Ordinance, to be non-exhaustive.

[84] As no grounds of decision had been provided for the admission of the defendant, it is not within the knowledge of this court whether the learned Chief Judge of Sabah and Sarawak had decided the defendant's petition on this basis or on the basis of s 2(2)(b) or both, but in any event this question is moot as the defendant was clearly qualified to be admitted under s 2(2)(b).

[85] For the abovesaid reasons, the court dismissed the instant originating summons, with costs.

Originating summons dismissed with costs.

Reported by Ashok Kumar